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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,875	11/18/2003	Lee R. Guterman	Guterman -2	3703

40518 7590 07/09/2007  
LEVINE BAGADE HAN LLP  
2483 EAST BAYSHORE ROAD, SUITE 100  
PALO ALTO, CA 94303

EXAMINER
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NGUYEN, VI X

ART UNIT	PAPER NUMBER
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3734

MAIL DATE	DELIVERY MODE
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07/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/715,875	<b>Applicant(s)</b> GUTERMAN ET AL.	
	<b>Examiner</b> Victor X. Nguyen	<b>Art Unit</b> 3734	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 April 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 and 34-43 is/are pending in the application.
- 4a) Of the above claim(s) 41-43 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 34-40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/3/2006</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election of Group 1, Species 1, figures 1-5, claims 1,34-40 in the reply filed on 4/20/2007 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without traverse** (MPEP § 818.03(a)).

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1,34-35,38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Ginsburg (4,873,978).

Ginsburg discloses a medical device (figure 3) having the limitations as recited, including: an elongated delivery wire 22 has a proximal end and a distal end, an expandable scaffold which resembles as a generally "U" shaped expandable arrangement 14 which locates at distal end of the delivery wire. Regarding the intended use "an aneurysm buttressing arrangement *for covering an aneurysm in an intracranial*, the scaffold *prevents escape of embolitic agents from the aneurysm while allowing blood flow through the vessel*". The

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statement of intended use and other functional statements have been carefully considered but are deemed not to impose any structure limitations on the claims distinguishable over Ginsburg reference which is capable of being used as claimed if one desires to do so. And where the scaffold has a bulbous distal end at 30 and a pair of narrower proximal ends at either side of element 32 in fig. 3, where the loop shaped scaffold defines a central opening which is variable in size at best seen in fig. 3.

Claims 1,34-40 are rejected under 35 U.S.C. 102(e) as being anticipated by Greenhalgh (6,346,117).

Greenhalgh discloses an aneurysm device (figures 6-7) having the limitations as recited, including: an elongated delivery wire 32 has a proximal end and a distal end, an expandable scaffold which resembles as a generally "U" shaped expandable arrangement 42 which locates at distal end of the delivery wire, where the scaffold is capable of preventing the escape of embolitic agents from the aneurysm while allowing blood flow through the vessel, where the scaffold has a bulbous distal end at the tip of 42, and a pair of narrower proximal ends occur at either side of element 62, and where the scaffold comprises a wire mesh 50 having a circular cross section, where the wire mesh at the bulbous end of the scaffold has a higher density of wires at 52 than the wire mesh at the proximal end of the scaffold at 32b. As to claims 38-40, Greenhalgh discloses in fig. 7, the device for covering an aneurysm having the limitations as recited.

### ***Conclusion***

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3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Pat. No. 6,245,089 to Daniel

U.S. Pat. No. 5,334,210 to Gianturco

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor X. Nguyen whose telephone number is (571) 272-4699.

The examiner can normally be reached on M-F (8-4.30 P.M).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on (571) 272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victor X Nguyen  
Examiner  
Art Unit 3734



VN  
7/3/2007



MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER